

Federal Communications Commission

DA 04-362

Feb 27 2004

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-33
Table of Allotments,)	RM-10847
FM Broadcast Stations.)	
(Cordele, Dawson, and Pinehurst, Georgia))	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 25, 2004

Released: February 27, 2004

Comment Date: April 19, 2004

Reply Comment Date: May 4, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by West Com Corp., permittee of Station WMRZ(FM) ("WMRZ"), Dawson, Georgia, and Metro Com Corp., licensee of Station WQXZ(FM) ("WQXZ"), Cordele, Georgia (collectively, "Petitioners"). Petitioners seek to amend the FM Table of Allotments by upgrading Channel 251A, Station WMRZ, to Channel 251C3. Since this upgrade would be short spaced to Channel 252A, Station WQXZ, Cordele, Georgia, Petitioners propose to reallocate Channel 252A, Station WQXZ, from Cordele to Pinehurst, Georgia. Petitioners explain that if the Commission grants their petition for rule making, they will file applications for authority to construct the proposed facilities and, if those applications are granted, they will construct the facilities proposed therein.

2. Pursuant to Section 1.420(g)(3) of the Commission's rules, the Petitioners request the upgrade of Channel 251A, Station WMRZ, to Channel 251C3. The proposed upgraded channel is mutually exclusive with Station WMRZ's existing authorization at Dawson, Georgia. With respect to the reallocation of Station WQXZ's Channel 252A, Cordele, Georgia, to Pinehurst, Georgia, Petitioners seek to invoke the provisions of Section 1.420(i) of the Commission's rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ The proposed use of Channel 252A at Pinehurst, Georgia, is mutually exclusive with Station WQXZ's existing authorization at Cordele, Georgia.

3. With respect to the proposed reallocation of Channel 252A to Cordele, Georgia, Petitioners assert that the adoption of their proposal will result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*,² by providing Pinehurst, Georgia,³ with its first local aural transmission service. The allotment of Channel 252A to Pinehurst would not deprive Cordele of its sole

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

³ Pinehurst is an incorporated community with a 2000 U.S. Census population of 307 persons.

local aural transmission outlet, because Cordele will retain local service from Station WAEF(FM).

4. Petitioners' proposal will result in gain and loss areas. By changing its transmitter site and upgrading Channel 251A to Channel 251C3, the permittee of Station WMRZ will provide new service to 110,260 persons over 2,513 square kilometers. The loss area will include 947 persons in an area of 227 square kilometers. Both the gain and loss areas are well served with 5 or more radio broadcast services. By changing its community of license from Cordele to Pinehurst, the licensee of Station WQXZ will provide new service to 20,013 persons in an area of 1,601 square kilometers. The loss area will include 18,167 persons over 1,598 square kilometers. Both Cordele and Pinehurst are well served with 5 or more radio broadcast services. Because Petitioners' proposal is consistent with the provisions of Sections 1.420(g)(3) and (i) of the Commission's rules, we shall propose to modify the authorizations of Stations WMRZ and WQXZ without entertaining competing expressions of interest in the use of Channel 251C3 at Dawson and Channel 252A at Pinehurst, Georgia, or requiring Petitioners to demonstrate the availability of additional equivalent channels for use by other parties

5. Consistent with the technical requirements of the Commission's rules, Channel 251C3 can be allotted to Dawson, Georgia, utilizing coordinates of 31-37-25 NL and 84-19-49 WL, with a site restriction of 20 kilometers (12.4 miles) southeast of Dawson. Consistent with the technical requirements of the Commission's rules, Channel 252A can be allotted to Pinehurst, Georgia, utilizing coordinates of 32-10-03 NL and 83-37-51 WL, with a site restriction of 12.9 kilometers (8.0 miles) east of Pinehurst.

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's rules, with respect to the communities listed below, as follows:

<u>Channel Nos.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Dawson, Georgia	251A	251C3
Cordele, Georgia	252A	-----
Pinehurst, Georgia	-----	252A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 19, 2004, and reply comments on or before May 4, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

Dan J. Alpert, Esq.
The Office of Dan J. Alpert
2120 N. 21st Road
Arlington, Virginia 22201

9. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules.⁴

11. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who

⁴ See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.